IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.7 OF 2005
IN
EXECUTION APPLICATION(L) NO.384 OF 2004

M/s. Niraj Movies Mumbai. ..Applicant.
V/s
M/s.Bhappie Sonie Productons & Ors. ..Respondents.

Mr. Rajiv Narula i/b Jhangiani, Narula & Associate for applicant.
Mr. Ashish Kamath i/b V. Deshpande for respondent Nos. 1A to 1C.

CORAM: A.M.KHANWILKAR,J
DATE : AUGUST 10, 2005.

P.C. :

1. Heard counsel for the parties. This chamber summons is taken out by the original applicants. First relief claimed in the chamber summons is to dispense with the notice under Order XXI Rule 22 of C.P.C., which is required to be issued to the respondent. It is the case of the applicant that the respondents were party to the arbitration proceedings and have participated in the said proceedings. In this situation, it is not necessary to issue notice under Order XXI Rule 22 to the said party. There is substance in this submission. Accordingly, applicants are entitled for the said relief in terms of prayer clause (a).

2. By this chamber summons, the applicants are

further praying for interim order during the pendency of execution application to appoint Court receiver in respect of the properties given in Schedule to the chamber summons and to direct the court receiver to forthwith to take legal possession of all the properties. The applicants further pray that till the disposal of the execution application, the respondent Nos. 1(a), 1(b) and 1(c) be restrained by order of injunction from transferring, encumbering, alienating, parting with possession and/or creating any third party rights in respect of properties given in the schedule to chamber summons. These reliefs are sought by the applicants on the assertion that in the past, when the applicants have taken out proceedings before this court, the respondents disposed of some of the valuable properties in their possession. In the backdrop of that experience, the applicants pray that aforesaid reliefs be granted.

3. However, these reliefs are vehemently opposed by the respondent. According to them, the question of appointing court receiver does not arise, especially when relief of injunction, if was to be granted, would serve the purpose of the applicants. In so far as the relief of injunction is concerned, according to the respondent, even that relief cannot

be granted for the simple reason that none of the properties referred to in the schedule are presently owned or possessed by the respondent. In so far as the property at Sr.No.1 is concerned, the same was sold under agreement dated 23rd December, 2003 to Indus Video Private Limited. The property at Sr.No.2 referred to in Schedule, according to the respondent, has been transferred in favour of M/s.Aasia Management and Consultancy Ltd., pursuant to agreement dated 10th October, 2000. In so far as the third property is concerned, contends the learned counsel that the said property is also transferred under registered agreement dated 24th July, 2003. The fourth property namely R.B.I. Bond worth Rs.25 Lakhs are concerned are already sold on 1st June, 2004 and the fifth property namely fixed deposit with the Hong Kong Bank is withdrawn/encashed on 5th September, 2001 and 29th May, 2002. It is therefore, contended that the question of granting injunction also does not arise.

4. However, in so far as property at Sr.No.2 and 5 are concerned, counsel for the applicants would contend that no evidence to substantiate the claim of transfer of the said property is placed on record on behalf of the respondent. In absence of satisfactory

evidence to establish transfer of the said properties, the applicants are entitled for injunction as prayed. In so far as the agreement relied upon by the counsel for the respondent in respect of property No.2, it is contended by the applicants that the said agreement pertains to some other film namely, Rutha Na Karo and is in the nature of finance agreement and not the case of transfer. In so far as the property at sr.No.1,3 and 4 are concerned, counsel for the applicant fairly states that the applicants will take recourse by taking out appropriate proceedings as may be advised.

5. Accordingly, question of considering relief of injunction will have to confined to properties at Sr.No.2 and 5 only. In so far as other properties referred to in Schedule are concerned, it will be open to the applicant to take recourse to such remedy as permissible by law.

6. In so far as property at Sr.No.5 is concerned, Fixed deposit in Hong Kong Bank, in affidavit in reply in paragraph 9, it is asserted that the deposits have been withdrawn on or about 5th September, 2001, 29th May, 2002. It is also stated in the reply affidavit that the respondents have not

inherited properties mentioned in the Schedule. The question whether the respondents have inherited properties mentioned in the Schedule, it is not necessary for me to examine the question. For, that will be considered in the execution application and such other proceedings, as would be taken by the applicants. I am inclined to accept the submission canvassed on behalf of the applicants that the affidavit in reply as filed does not give the details much less clearly assert that "all" the fixed deposits with the Hong Kong Bank have been withdrawn by the respondent or that "no further" fixed deposits are lying with the Hong Kong Bank. Viewed in this perspective, the respondents are injuncted from withdrawing any further fixed deposit in the Hong Kong Bank if it is still not encashed.

7. In so far as the property at Sr. 2 is concerned, I find substance in the argument canvassed on behalf of the applicants that agreement which is sought to be relied upon by the respondent pertains to the Film Rutha Na Karo and not Tere Pyar Ki Kasam which is property in question. To get over this position, counsel for the respondent has relied on some communication which according to him was part of proceedings before the Arbitrator to indicate that

the old name of property at Sr.No.2 was Rutha Na Karo. Even if that contention is to be accepted, prima facie there is force in the argument canvassed on behalf of the applicants that the agreement dated 10th October, 2002 is in the nature of finance agreement and not one of transfer of copy right as such. Viewed in this perspective, respondent will have to be injuncted from transferring copy right of the said film at Sr.No.2 either in the name of Tere Pyar Ki Kasam or Rutha Na Karo, as contended till appropriate order is passed by this court. Accordingly, chamber summons is made absolute in terms of prayer clause (b) to the limited extent referred to above.

8. Needless to observe that the injunction would operate from today when this order is passed.

9. It is again made clear that it will be open to the applicants to take recourse to further remedy, as may be advised with regard to the item No.2 and 5 also, in addition to properties at Sr. 1, 3 and 4.